

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule I)	NOTICE OF PUBLIC HEARING
and amendment of ARM 37.89.103,)	ON PROPOSED ADOPTION
and 37.89.106 pertaining to Mental)	AND AMENDMENT
Health Access Plan Prescription Drug)	
Benefits for Persons Eligible for)	
Medicare)	

TO: All Interested Persons

1. On March 15, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on March 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The rule as proposed to be adopted provides as follows:

RULE I MENTAL HEALTH SERVICES PLAN, OUTPATIENT DRUGS FOR BENEFICIARIES ELIGIBLE FOR MEDICARE (1) Notwithstanding any other provision of this subchapter, a plan beneficiary who is also eligible for Medicare is subject to the limitations and benefits provided for in this rule.

(2) Reimbursement for outpatient drugs provided to plan beneficiaries who are also eligible for Medicare are limited to medically necessary barbiturates and benzodiazepines prescribed for the treatment of mental illness.

(3) Reimbursement will not be made for drugs for which payment as prescribed and dispensed or administered to an individual is available for that individual under Medicare Part A, Part B, or Part D even though the individual is eligible for coverage under Medicare but has declined to enroll in Part A, Part B, or Part D.

(4) Additional assistance will be provided plan beneficiaries who are also eligible for Medicare as follows:

(a) beneficiaries eligible for full subsidy extra help through the Social Security Administration will receive no additional assistance through the plan;

(b) beneficiaries eligible for partial subsidy extra help through the Social Security Administration will receive plan assistance with annual deductibles and

coinsurance, for drugs prescribed for the treatment of mental illness up to a combined maximum of \$425.00 per month; or

(c) beneficiaries not eligible for subsidy extra help through the Social Security Administration will receive plan assistance with annual deductibles, coinsurance, and cost-sharing within the coverage gap, for drugs prescribed for the treatment of mental illness up to a combined maximum of \$425.00 per month.

(5) Reimbursement will be made only for services for which third party payment is not available.

AUTH: 53-2-201, MCA
IMP: 53-21-701, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (8) remain the same.

(9) "Medicare Part D" means the prescription drug benefit available to Medicare beneficiaries through a Medicare prescription drug plan or a Medicare Advantage Plan.

(9) through (13) remain the same but are renumbered (10) through (14).

~~(14)~~ (15) "Serious emotional disturbance (SED)" means with respect to a youth between the ages of six and 17 years that the youth meets the following requirements of ~~(14)~~(15)(a) and either ~~(14)~~(15)(b)₁ or ~~(14)~~(15)(c):

(a) through (a)(xx) remain the same.

(b) As a result of the youth's diagnosis determined in ~~(14)~~(15)(a) and for a period of at least six months, or for a predictable period over six months, the youth consistently and persistently demonstrates behavioral abnormality in two or more spheres, to a significant degree, well outside normative developmental expectations, that cannot be attributed to intellectual, sensory, or health factors:

(i) through (c)(ii) remain the same.

(iii) the juvenile correctional system, due to the diagnosis determined in ~~(14)~~(15)(a), as evidenced by a youth court consent adjustment or consent decree or youth court adjudication; or

(iv) through (d)(vi) remain the same.

~~(15)~~ (16) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person meets the requirements of ~~(15)~~(16)(a), (b)₁ or (c). The person must also meet the requirements of ~~(15)~~(16)(d). The person:

(a) through (d)(v) remain the same.

(16) through (17) remain the same but are renumbered (17) through (18).

~~(18)~~ (19) The department hereby adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the St. Anthony's ICD-9-CM Code Book (1998) effective October 1, 1998 through September 30, 1999, published by St. Anthony Publishing. The department also hereby adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and

Statistical Manual of Mental Disorders, Fourth Edition (1994), published by the American Psychiatric Association of Washington, DC. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated herein in order to provide common references for purposes of the provision of services through the mental health services plan. Copies of applicable portions of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

AUTH: 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-202, 53-21-701, MCA

37.89.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

(1) An individual is eligible for covered services under the plan if:

(a) through (c) remain the same.

(d) the individual is an adolescent who has met the eligibility requirements of the plan as a youth with serious emotional disturbance, but who will not meet the eligibility requirements of the plan as an adult with severe and disabling mental illness. The individual may continue to be eligible as an adolescent for the purpose of transition to independent living until the age of 21, provided the individual continues to meet income requirements; ~~and~~

(e) the total number of children and the total number of adults who can be eligible for MHSP at any time is within the limits set by the department as provided in (6) ~~of this rule;~~ and

(f) the individual is eligible for Medicare, is enrolled in a Medicare prescription drug plan or Medicare Advantage Plan, and has applied for subsidy extra help from the Social Security Administration and, if necessary, premium assistance from Big Sky Rx.

(2) through (6)(d)(ii) remain the same.

AUTH: 41-3-1103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-6-706, 53-21-703, MCA;

IMP: 41-3-1103, 52-2-603, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202, 53-21-702, MCA

4. The Department of Public Health and Human Services (the Department) is proposing the amendment of ARM 37.89.103, "Mental Health Services Plan, Definitions," 37.89.106, "Mental Health Services Plan, Member Eligibility," and the adoption of a new rule, "Mental Health Service Plan, Outpatient Drugs for Beneficiaries Eligible for Medicare". The purpose of the proposed rule amendments is to eliminate prescription drug coverage, except for selected drugs, for beneficiaries of the Mental Health Services Plan (MHSP) who are also eligible for Medicare. The proposed changes would be effective May 5, 2006, although MHSP

beneficiaries who are also enrolled in a Medicare prescription drug plan should have begun receiving most prescription drugs, including drugs needed for treatment of mental illness, through their Medicare prescription drug plans beginning January 1, 2006, or the first of the month following their enrollment in a Medicare prescription drug plan.

The proposed rule amendments are necessary to coordinate MHSP prescription drug benefits with federal changes in section 101 of Title I of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA), Public Law 108-173, and to avoid unnecessary duplication of pharmacy benefits.

MMA creates new Medicare prescription drug benefits for people who are eligible for Medicare. MMA is a federal initiative with significant implications for Medicare beneficiaries and the states.

The Department's rules currently provide that MHSP pays the cost of covered prescription drugs that are medically necessary for treatment of mental illness for enrolled people who also have Medicare. This benefit was adopted before a prescription drug benefit was available to Medicare beneficiaries. Effective January 1, 2006, Medicare beneficiaries have had access to prescription drug coverage from Medicare-approved prescription drug plans or Medicare Advantage Plans. They may also qualify for subsidy extra help from the Social Security Administration and premium assistance from Big Sky Rx, the state of Montana's pharmacy access program for Medicare beneficiaries.

The Department proposes that people enrolled in MHSP who are also eligible for Medicare must also enroll in a Medicare prescription drug plan. This proposal would assure that available state funds will be used to provide benefits to the greatest number of people in the most cost-effective manner.

Since MHSP prescription drug benefits are provided for in the Department's rules, ARM 37.89.114, amendment of the rules is necessary to modify MHSP drug benefits for the individuals who could be covered under Medicare. This proposal is reasonable because the affected individuals would still have pharmacy benefits under a Medicare prescription drug or Medicare advantage plan. Out-of-pocket drug expenses for those individuals would not increase under this proposal because subsidies would be available through the Social Security Administration, Big Sky Rx, and MHSP.

Approximately 900 MHSP beneficiaries are eligible to receive their prescription drugs through a Medicare prescription drug or Medicare Advantage Plan. If the Department's proposal is adopted, MHSP will realize savings to its pharmacy budget and the MHSP will cease payment of most prescription drugs for beneficiaries with Medicare. These savings may in turn be used to provide a pharmacy benefit to larger numbers of mentally ill Montanans or to increase the monthly limit of MHSP's pharmacy benefit.

The specific provisions proposed by the Department are described below:

Rule I

The Department proposes the adoption of a new rule containing the terms and conditions of prescription drug coverage for MHSP beneficiaries who are also eligible for Medicare. All the new substantive provisions governing those benefits would be located in the same rule, making them easy to find.

The Department proposes to continue covering medically necessary barbiturate and benzodiazepines prescribed for the treatment of mental illness. Coverage for those drugs is not available through Medicare. Since this proposal is not intended to change the overall cost of prescription drugs to MHSP beneficiaries, it is necessary to include a specific provision including them.

The Department is proposing a new provision that makes it clear reimbursement will not be available through MHSP for prescription drugs that are available through Medicare. The Department's reasoning is discussed above. Other options considered by the Department are discussed below.

The Department proposes that MHSP provide additional assistance to MHSP beneficiaries up to a combined maximum of \$425 per month. Prescription drug assistance would be available under this proposal whether the MHSP beneficiary was eligible for partial or no subsidies through the Social Security Administration. MHSP beneficiaries eligible for full social security subsidies would not be eligible to receive MHSP subsidies.

The Department is also proposing a new provision that makes it clear reimbursement will not be available through MHSP for prescription drugs for which third party payment, such as private health insurance, is available.

37.89.103

The Department proposes the addition of a definition in this rule describing Medicare Part D. Under this definition, Medicare Part D would include a Medicare Advantage Plan.

37.89.106

The Department is proposing a new provision in this rule. A person who is eligible for Medicare would have to be enrolled in a Medicare prescription drug plan or Medicare Advantage Plan and would be required to apply for subsidy extra help and, if necessary, Big Sky Rx in order to be eligible for MHSP. The Department is proposing a specific provision that makes it clear reimbursement will not be available through MHSP for prescription drugs that are available through Medicare.

Other options considered

The Department considered maintaining the MHSP rules as they stand. This option was rejected as too costly and an inefficient use of available state funds.

The Department also considered requiring Medicare beneficiaries to enroll in a Medicare-approved prescription drug plan while MHSP would have continued to pay for prescription drugs that might not be covered by the beneficiaries' prescription drug plans. This option was rejected because the Medicare prescription drug benefit is comprehensive and has many built-in beneficiary protections with oversight by the Centers for Medicare and Medicaid Services (CMS). The Department believes CMS will assure that Medicare beneficiaries have access to all medically necessary prescription drugs and access to quick and efficient exceptions and appeals processes.

The Department is concerned about a successful transition for Medicare beneficiaries from receiving prescription drugs through MHSP to their Medicare-approved prescription drug plans. Consequently, it proposes overlapping safety-net prescription drug benefits to ensure coverage of all MHSP beneficiaries with Medicare until they have had ample opportunity to enroll in a Medicare prescription drug plan. The Department will work closely with Medicare, community partners, and the prescription drug plans to ensure a smooth and successful transition takes place.

Groups affected

The proposed amendments to these rules would affect approximately 420 MHSP pharmacy providers, five mental health centers and about 900 Medicare enrolled MHSP beneficiaries.

Fiscal effect

The proposed amendments could save the MHSP up to \$750,000 over the prescription drug benefit costs projected for the 2006-2007 biennium if the MHSP rules remain as they stand. Since the affected MHSP beneficiaries' prescription drug costs would still have coverage from Medicare-approved prescription drug plans or Medicare Advantage Plans, the Department does not expect the cost of prescription drugs to change for MHSP beneficiaries as a result of this proposal.

5. These rule changes will be applied effective May 5, 2006.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on March 23, 2006. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule

changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva
Rule Reviewer

/s/ Russ Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State February 13, 2006.